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FAA-01-8690-46

NATURAL RESOURCES DEFENSE COUNCIL

Via Federal Express

June 8, 2001

Anthony Fazio, Director  
Office of Rulemaking  
Docket Management System  
U.S. Department of Transportation  
400 Seventh Street S.W., Room PL401  
Washington, DC 20590

DEPT. OF TRANSPORTATION  
DOCKETS  
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Re: Docket No FAA-2001-8690 – Draft Rule Implementing the National  
Parks Air Tour Management Act

Dear Director Fazio:

We are responding on behalf of the Natural Resources Defense Council (NRDC) regarding the above-captioned rule proposed by the Federal Aviation Administration (FAA). The draft rule establishes, in cooperation with the National Park Service (NPS), a 5,000-foot “above ground level” altitude pursuant to the provision of the National Parks Air Tour Management Act in which the phrase “commercial air tour operation” is defined. See 49 U.S.C. § 40128(a)(1)(A).<sup>1</sup> Operations which satisfy that definition are subject to regulation by the NPS and the FAA to manage and mitigate their impacts on national park visitors, wildlife, and other resources. NRDC, a non-profit environmental advocacy organization with more than 400,000 members nationwide, has a long history of efforts in defense of our National Parks and their varied and outstanding resources.

The National Parks were established to conserve the resources—natural, cultural and historic—that Americans have chosen to set aside as part of our heritage. National Parks allow visitors to experience natural beauty, solitude,

<sup>1</sup> The National Parks Air Tour Management Act prohibits “commercial air tour operations” over national parks except in accordance with its terms. 49 U.S.C. § 40128(a)(1)(A). The term “commercial air tour operation” is defined to include “any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park,” or “within ½ mile outside the boundary of any national park,” during which the aircraft flies either “(i) below a minimum altitude . . . above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of an aircraft . . . ); or (ii) less than 1 mile laterally from any geographic feature within the park.” Id. sub§§ (i), (ii).

and serenity. The Air Tour Act was enacted to control scenic overflights, which pose a direct threat to the integrity of our Parks, the visitor experience and the wildlife that inhabit them. The NPS has previously recognized the potentially disastrous effects that aircraft overflights may have on National Parks. See National Park Service, Report to Congress: Report on Effects of Aircraft Overflights on the National Park System (1994), available at <http://www.nonoise.org/library/npreport/into.htm>. See also Effects of Aircraft Noise and Sonic Booms on Domestic Animals and Wildlife: A Literature Synthesis, a cooperative research project by the U.S. Fish and Wildlife Service National Ecology Center in Fort Collins, Colorado, and the Air Force Engineering and Services Center at Tyndall AFB, Florida (1988), available at <http://www.nonoise.org/library/animals/litsyn.htm>. As a result, we applaud the FAA's efforts to implement the Air Tour Act and to preserve our National Park heritage. However, more needs to be done if the promises of this Act are to be fulfilled.

Unregulated scenic helicopter tour operations, in particular, pose significant dangers to the environment of National Parks, as well as to safety and local economies. The environmental effects of scenic helicopter tours include a devastating impact on wildlife, a drastic increase in noise pollution and an increased risk of fire. Noise levels from scenic heli-tours that have proliferated over a number of Parks, and that now threaten Wyoming's Grand Teton National Park and its irreplaceable natural resources, have been shown to disrupt the lifestyles and even life cycles of resident wildlife, including endangered species. Helicopter tours are also inconsistent with the preservation of natural quiet in our National Parks and with the solitude and associated experiences that visitors expect to enjoy while at them.

Furthermore, scenic helicopter tours increase the risk of fire, which in turn can have, and has had, significant adverse impacts on the natural resources of Parks and surrounding regions. Fuel lines are likely to rupture when a helicopter crashes, which is not uncommon. The resulting fire can devastate trees and other vegetation, and wildlife and their habitats.

In addition to the significant environmental dangers, it bears emphasis that scenic helicopter tours pose serious safety concerns. For example, the safety issues associated with scenic helicopter tours operating out of the Jackson Hole Airport, which is located within Grand Teton National Park, arise from the combination of elevation, terrain, climate, heat and extremely difficult access conditions that are present in Teton County.

There is also a high likelihood that scenic helicopter tours will have negative economic impacts that will be difficult to reverse. Wyoming, for example, relies heavily on its ability to attract visitors who wish to experience nature and majestic mountains. Since the early 1900's, Grand Teton Park (along with other federal lands in Teton County) has been a prime location for such experiences. Scenic

helicopter tours will interfere with the ability of visitors to experience tranquility and wilderness in a natural setting at the Park and elsewhere in Teton County. As a result, the overall economic impact on the guest lodges, ranches and other local businesses that serve visitors is bound to be negative.

Proper regulation and implementation of the Air Tour Management Act should drastically reduce the potential of such dangers to ravage our National Parks. In regard to the draft rule, NRDC fully supports the FAA's recommended altitude of 5,000 feet Above Ground Level as the appropriate altitude to trigger the air tour management planning process. This altitude will encompass the vast majority of operators giving commercial air tours of parks. Furthermore, this altitude will not interfere with general aviation traffic, since it will affect only commercial air tour operators.

We offer the following suggestions to better facilitate the implementation of the Act. First, the FAA should move promptly to establish the process by which air tour management plans will be developed in order to ensure full implementation and compliance with the Act. Second, the FAA should prohibit from flying over parks those air tour operators who did not provide notification of their over-park operations by August 2000 as requested by an FAA Advisory. Third, the FAA should prohibit new air tour operators from flying over parks before the air tour management planning process starts by immediately enforcing the "no new entrants" clause of the Act in order to preserve the status quo. Fourth, the FAA should defer to the NPS to determine the detrimental impacts of noise on wildlife and park visitors, since NPS possesses the necessary expertise and the FAA does not. Last but not least, the FAA should ensure itself and the public that it is correctly interpreting this important Act and in particular the Act's definition of "commercial air tour operations."

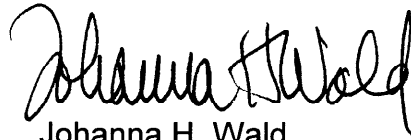
This last suggestion is an outgrowth of our belief that the FAA has misinterpreted this key statutory definition in connection with certain scenic helicopter tour operations at Grand Teton National Park. In a final order, the FAA determined that the Act did not apply to those operations, even though the tours will follow a flight plan that goes directly over, and within one-half mile of, Grand Teton National Park. Clearly, the FAA cannot achieve the purpose of the Air Tour Act on the basis of a misinterpretation of its key term. Nor can the air tour management planning process be implemented on a sound basis without a correct interpretation of the statute. On the contrary, if this section of the Act is misinterpreted, operations that *should* be subject to its provisions will not be regulated and their environmental impacts will not be mitigated. We urge the FAA to reconsider its interpretation of this key section in light of the statute's literal language and legislative history in order to fully effectuate the Congressional intent of preserving the resources our National Parks and the visitor experience.

In conclusion, we thank you for your commitment to the preservation of National Parks. We also thank you in advance for considering these comments. If you have any questions about any of our recommendations, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joshua Borger', with a long, sweeping horizontal line extending to the right.

Joshua Borger  
Law Clerk

A handwritten signature in black ink, appearing to read 'Johanna H. Wald', with a stylized, cursive script.

Johanna H. Wald  
Senior Attorney

cc: The Honorable Norman Y. Mineta, Secretary of Transportation